



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201406025

NOV 13 2013

Uniform Issue List: 408.03-00

SE:T:EP:RA:T1

LEGEND:

Taxpayer A =

IRA B =

Custodian C =

Individual D =

Company E =

Partnership F =

Account G =

Custodian H =

Amount 1 =

Dear :

This is in response to your letter dated August 22, 2012, as supplemented by correspondence dated November 4, 2012, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayer A represents that she received a distribution from IRA B, totaling Amount 1, on October 7, 2011. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was caused by the misrepresentation of Individual D that Partnership F was an eligible IRA custodian. Taxpayer A further represents that Amount 1 has not been used for any other purpose.

Taxpayer A owns IRA B with Custodian C. In 2011 Individual D, a real estate investor with Company E, alerted Taxpayer A to an investment opportunity in Partnership F, a limited-liability real estate company.

On two occasions, Taxpayer A represents that she consulted with her certified public accountant prior to making the investment. The CPA advised Taxpayer A that an investment in real estate would be possible with an IRA, provided that the proceeds were held by a non-bank Custodian H in a self-directed account. Taxpayer A indicated to her CPA that Individual D had assured her, in several conversations, that Taxpayer A could use her IRA toward the investment in Partnership F without any negative tax consequences. Individual D had represented to Taxpayer A that over 50 of her clients had invested in this manner. Individual D told Taxpayer A that she was very experienced in handling real estate investments with IRAs and that since Taxpayer A was not personally touching the money, the transfer from the IRA to the real estate investment would be a direct rollover. Based on these conversations, Taxpayer A represents that she believed Individual D to be an eligible custodian for Amount 1.

On October 5, 2011, Taxpayer A signed a subscription agreement for Partnership F. The agreement indicated that Taxpayer A was issued a Class A membership unit valued at Amount 1 in Partnership F. Taxpayer A twice indicated on the agreement that IRA B was to own the membership unit.

On October 7, 2011, Taxpayer A wired Amount 1 to Account G, at Custodian H. On October 11, 2011, Individual D emailed Taxpayer A confirming that Amount 1 was received by Account G. The subject of the email from Individual D was entitled "Partnership F IRA Rollover Investment." Taxpayer A asserts that upon receiving the October 11, 2011 email, she believed that she had done everything she needed to do to effectuate a timely rollover of the IRA distribution.

Custodian C sent Taxpayer A a 1099-R accounting for the distribution of Amount 1. Taxpayer A asserts that she thought she had completed a timely rollover to Partnership F. Taxpayer A asserts that she learned of the failed rollover in March 2012, when she received Partnership F's Form K-1, which listed the membership unit in Partnership F as being owned by an "Individual" and not an "IRA."

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement in section 408(d)(3) of the Code with respect to the distribution of Amount 1 and allow Taxpayer A to re-title the land investment into the IRA.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n) of the Code) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of Code section 408. One of the requirements is that an applicant must assure the uninterrupted performance of its fiduciary duties notwithstanding the death or change of its owners (the ongoing business concept). This precludes an individual from being a trustee or custodian.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 1 was caused by the misrepresentation of Individual D that Partnership F was an IRA custodian.

Pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount 1 to an IRA. Please note that Section 408(d)(3)(I) and Rev. Proc. 2003-16 limit relief to a waiver of the 60-day requirement. Accordingly, the Service has no authority to allow Taxpayer A to retitle the land investment in the IRA. However, provided all other requirements of Code section 408(d)(3) (except the 60-day requirement) are met with respect to the contribution of an amount not to exceed Amount 1, such contribution will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

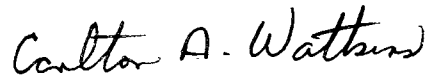
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the Taxpayer A who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to her authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact _____ (I.D. # _____) by
phone at _____ or fax at _____. Please address all
correspondence to SE:T:EP:RA:T1.

Sincerely yours,



Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: